Ontario Securities Commission

PERSPECTIVES

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inside...

FEATURE

OSC Issues Investor Confidence Rules

As part of its campaign to restore investor confidence in our capital markets, the Ontario Securities Commission issued three proposed rules for comment on June 27, 2003. The proposed rules are the latest in a series of initiatives designed to reassure investors in the wake of U.S. financial reporting scandals.

"The rules are as robust as parallel rules required by the U.S. Sarbanes-Oxley legislation, but address unique Canadian concerns," said David Brown, OSC Chair. "They are made in Canada and right for the Canadian market. They include accommodations for smaller issuers, closely-held companies and issuers that are listed on an American exchange. And most importantly, the rules have near-unanimous national backing, with 12 of our 13 provincial and territorial securities regulators joining in support."

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Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

Three New Commissioners Appointed to Ontario Securities Commission

The Ontario Securities Commission announced on June 25, 2003 the appointment of three new Commissioners, bringing the Commission to a total of 14 members. The new members, each appointed by Order in Council for three-year terms, are Wendell S. Wigle, appointed on May 28, 2003, as well as Paul Kevin Bates and Suresh Thakrar, both appointed on June 11.

"I am very impressed with the qualifications that our new Commissioners bring to the OSC," said David Brown, OSC Chair. "It is vital, as we rebuild investor confidence in our capital market, that our Commissioners bring broad knowledge of how the securities industry works, in all of its aspects and functions. As well, I am pleased that our new members will increase our ability to hear matters brought before the Commission in a timely manner."

The OSC Commissioners form the Board of Directors for the Commission, overseeing the management of the financial affairs of the Commission and setting policy under the *Ontario Securities Act* and the *Ontario Commodity Futures Act*. As well, commissioners sit as members of independent panels assembled to hear matters and impose sanctions as permitted by the Acts.

Biographical Information

Paul K. Bates

Former CEO of Charles Schwab Canada, Mr. Bates serves on boards in both the for-profit and not-for-profit sectors, is a management consultant and is a faculty member at the University of Toronto's Joseph L. Rotman School of Management. His appointment expires on June 10, 2006.

Suresh Thakrar, FICB

A former Vice-President of RBC Financial Group, where he has over the past 30 years held a number of senior positions across various areas of the Bank. Mr. Thakrar is currently on a sabbatical and engaged in a number of philanthropic activities in Canada and abroad. His appointment expires on June 10, 2006.

Wendell S. Wigle, Q.C.

A member of the Ontario Bar since 1957, appointed Queen's Counsel in 1972, certified as a Specialist (Civil Litigation) by the Law Society of Upper Canada in 1988, President of the Advocates' Society (1977-78) and the Medico-Legal Society of Toronto (1984-85), Mr. Wigle is senior litigation counsel at Hughes, Amys. His appointment expires on May 27, 2006.

New Interactive Centre Quizzes Launched by investorED.ca

How do you handle risk? Does your investment behaviour make you a target for scams? How much do you know about investing? InvestorED.ca's Interactive Centre now offers a series of new quizzes which can enhance your investment know-how and help you protect yourself from investment fraud.

Three new risk quizzes help you gauge your tolerance for risk and understand how much risk you are willing to take to reach your investment goals. These quizzes join the popular Mutual Fund Fee Impact Calculator and interactive tools from the Canadian Securities Administrators on investorED.ca's Interactive Centre.

Established by the Ontario Securities Commission in 2000, the Investor e.ducation Fund is dedicated to providing investors with easy-to-use, relevant and trusted financial information. Launched in early February, our website www.investorED.ca gathers resources from the most objective sources of investment information in Canada - securities regulators.

For more information about the Investor e.ducation Fund visit the About Us section of *www.investorED.ca*.

Final Five Year Report on Securities Law Review Released

On May 29, 2003, the Ontario government announced the release of the Five Year Review Committee Final Report - Reviewing the Securities Act (Ontario). The committee, which examined securities legislation in Ontario and the Ontario Securities Commission, was chaired by Mr. Purdy Crawford, Q.C.

"I am very pleased with the committee's work," said Ontario Finance Minister Janet Ecker. "Up-to-date securities laws play a critical role in making sure we have fair and efficient capital markets. The committee also advocates moving toward national securities regulation, a position that the government of Ontario strongly supports."

The government has already acted to improve securities

legislation in the province based on recommendations contained in the committee's interim report. The final report supports each of the steps that have been taken:

- Increased court fines and prison terms for general offences;
- New powers for the OSC to impose fines for securities violations and to order offenders to disgorge their ill-gotten gains;
- New rule-making powers for the OSC to make corporate executives accountable for the financial statements and internal controls of their companies and to ensure that audit committees of public companies play an appropriate role in ensuring the integrity of those financial statements;
- Proposals in this spring's Budget legislation, *The Right Choices Act*, which would allow broader rights for secondary market investors to sue companies that make misleading or untrue statements or fail to give full and timely information; and
- A Memorandum of Understanding between the OSC and the Ministry of Finance has been executed as suggested in the committee's final report.

"I want to thank the committee for its hard work in reviewing Ontario's securities legislation," said Minister Ecker. "Their recommendations will help us move forward in our continuing efforts to protect Ontario investors and protect the integrity of our markets. Feedback on the final report will be important in terms of developing draft legislation for further consultation."

Ontario's *Securities Act*, as amended in 1994 and effective in 1995, requires that an advisory committee be appointed to review Ontario's securities laws every five years. This is the first five-year review.

The Five Year Review Committee Final Report is available on the Ministry of Finance website at *www.gov.on.ca/FIN/english/enghome.html* or on the Ontario Securities Commission website at *www.osc.gov.on.ca/en/regulation.html*.

Memorandum of Understanding Between the Minister of Finance and the OSC

Under Subsection 3.7(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, the Commission and the Minister of Finance are required to enter into a Memorandum of Understanding (MOU) every five years. The MOU must set out:

- the respective roles and responsibilities of the Minister and the Chair;
- the accountability relationship between the Commission and the Minister;
- the responsibility of the Commission to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
- any other matter that the Minister may require.

The MOU between the Commission and the Minister dated May 26, 2003 became effective immediately. The MOU is on the OSC website under Rules and Regulations, Rulemaking and Notices, Notices, Memoranda of Understanding.

Questions may be referred to **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, email: *swolburghjenah@osc.gov.on.ca*, or **Krista Martin Gorelle**, Senior Legal Counsel, General Counsel's Office, (416) 593-3689, email: *kgorelle@osc.gov.on.ca*.

Margo Paul Appointed Director, Corporate Finance Branch

Margo Paul has been appointed Director of the Corporate Finance Branch of the Ontario Securities Commission, Executive Director Charles Macfarlane announced on May 6, 2003.

"Margo has risen through the ranks of the OSC in her near ten-year career with us," Mr. Macfarlane said. "Quite fittingly, she will now lead the branch which she initially joined, and where she served in various functions for most of her OSC career. Margo has been in the Director role on an acting basis for quite some time now. She has certainly demonstrated her ability to manage the branch during a period in which staff were called upon to meet the challenges of a very heavy policy development agenda."

Prior to joining the Commission in 1994, Ms Paul practised corporate and securities law. She received a business degree and a law degree from the University of Western Ontario and a Masters degree in law from Dalhousie University. She was called to the Ontario bar in 1988.

"I extend a great degree of credit for Corporate Finance's success in the last year to the branch's very strong management team and highly-specialized staff," said Ms Paul. "Given the tasks that the commission will set for itself in the coming year, I know I will continue to count on our staff's dedication to meet the upcoming challenges as we build on the OSC's investor confidence initiatives."

The Corporate Finance Branch is comprised of 80 staff, half of whom are members of the law or accounting professions, with the balance made up of administrators. Responsible for the regulation of public companies, the branch oversees offerings, continuous disclosure filings, take-over bids, as well as mergers and acquisitions.

National Registration Database Filing Deadlines Extended

Registrants have indicated to staff that in some cases the quality of the data converted from the Commission's internal registration system to the National Registration Database (NRD) is poor. Staff very much regrets this and is attempting to relieve the burden this has placed on registrants in two ways.

First, staff has extended some of the deadlines in the transition sections of the NRD and Registration Information rules. Specifically, staff will not take any action against firms or individuals that make NRD submissions under the following sections after the time required in the sections so long as the filing is made on or before September 30, 2003:
(a) section 7.4, section 7.6, and paragraph 7.9(1)(a) of Multilateral Instrument 31-102;
(b) section 7.4, section 7.6, and paragraph 7.9(1)(a) of OSC Rule 31-509 (*Commodity Futures Act*);
(c) paragraph 8.2(a), paragraph 8.2(c), section 8.3, and section 8.4 of Multilateral Instrument 33-109; and
(d) paragraph 8.2(a), paragraph 8.2(c), section 8.3, and section 8.4 of OSC Rule 33-506 (*Commodity Futures Act*).

Second, staff is investigating whether registration categories and officer titles that have been loaded incorrectly to NRD can be reloaded properly without industry involvement. Given this, registrants may want to focus on transition issues other than correcting these data conversion errors. We will use www.NRD-info.ca to provide updates on any progress we are able to make on this issue.

During the implementation of NRD, registrants may encounter situations that create undue burden and require exemptive relief. Staff recognizes this and will attempt to assist registrants when possible.

Please refer your questions to **Dirk de Lint**, Legal Counsel, (416) 593-8090, *ddelint@osc.gov.on.ca* or **David Gilkes**, Manager, Registrant Regulation, (416) 593-8104, email: *dgilkes@osc.gov.on.ca*.

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

IOSCO Task Forces Study Analysts and Credit Rating Agencies

At its February 2003 meeting in Melbourne, Australia, the Technical Committee of IOSCO established a Chairs Committee and gave it a mandate to develop draft guidance in respect of analysts and credit rating agencies (CRAs). The Chairs Committee is composed of the most senior representatives of many IOSCO Technical Committee members. OSC Chairman David Brown is a member of this committee, which is being led by Commissioner Roel Campos of the United States Securities and Exchange Commission.

The work of the Chairs Committee relating to analysts is based upon an extensive prior study carried out by an IOSCO Project Team on Analyst Standards. The Project Team, which completed its mandate in February 2003, studied:
- the varying roles played by analysts employed in brokerage and investment banking firms (sell-side analysts);
- the types of actual and perceived conflicts of interest that confront such analysts and their employers; and
- current and proposed regulatory schemes for analysts in various jurisdictions.

The CRA project began in the spring of 2003 with the completion of a study regarding:
- CRA functions and operations;
- the ways in which financial market participants use ratings;
- the extent to which ratings are used in regulation; and
- the nature of any regulatory oversight of CRAs.

An IOSCO Project Team on CRAs, established to provide expert support for the Chairs Committee, conducted the study and is reviewing the results with a view to establishing guidance on CRAs. The Chairs Committee is expected to report on these mandates to the Technical Committee at its upcoming meeting in Athens, Greece, in September 2003.

IOSCO Publishes Report on Transparency of Short Selling

Short selling, broadly defined as the sale of securities that the seller does not own, continues to attract controversy. Some consider it a practice that adds to market efficiency, others see it as a practice that benefits markets but should be subject to certain controls, and still others believe that it is more likely to damage markets than to enhance them.

Throughout the recent bear market, there has been renewed public concern in some countries about the role of short selling in exacerbating market declines and increasing short-term volatility. Accordingly, the Technical Committee of IOSCO asked its Standing Committee on Secondary Markets to prepare a report examining the role that greater transparency of short selling might play in securities markets and the forms such transparency might take.

The committee's report was published by IOSCO in June 2003 and can be downloaded from the "Library" of public documents on IOSCO's website (*www.iosco.org*).

Emerging Markets Committee Report on the Regulation of Insider Trading

In the Spring 2003 edition of Perspectives, we noted that the OSC belongs to the Technical Committee of IOSCO, one of its two working committees. The second working committee is the Emerging Markets Committee (EMC) which promotes the development and improves the efficiency

of emerging securities markets by establishing principles and minimum standards, preparing training programs for the staff of members and facilitating the exchange of information and transfer of technology and expertise.

In March 2003, the EMC published a report describing the regulatory approaches to insider trading in various IOSCO member jurisdictions and proposing guidelines for the creation and/or amendment of insider trading laws. This report can be downloaded from the Library on the IOSCO website (*www.iosco.org*).

Memorandum of Understanding with the China Securities Regulatory Commission

On May 5, 2003 the Ontario Minister of Finance approved the Memorandum of Understanding (MOU) among the Ontario, British Columbia, Alberta and Quebec Securities Commissions and the China Securities Regulatory Commission (CSRC), dated as of March 21, 2003. In accordance with section 143.10 of the Securities Act, R.S.O. 1990, c. S.5, as amended, the MOU comes into effect, with respect to Ontario, on the day it is approved by the Minister.

The purpose of the MOU is to promote investor protection and the integrity of the securities and futures markets by providing a framework for cooperation, including channels of communication, and increasing mutual understanding and the exchange of regulatory and technical information. The MOU is also a necessary condition for Canadian companies to participate in joint ventures in the securities and fund management business in China. The completion of this MOU therefore opens new business opportunities in China for Canadian financial firms.

The MOU with the CSRC was published in the Bulletin on April 4, 2003. Questions may be referred to: **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs, 416-593-8245, email: *swolburghjenah@osc.gov.on.ca* or **Krista Martin Gorelle**, Senior Legal Counsel, General Counsel's Office, 416-593-3689, email: *kgorelle@osc.gov.on.ca*.

For more information about these and other international initiatives, please contact **Susan Wolburgh-Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, *swolburghjenah@osc.gov.on.ca*, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593-8282, *jholmes@osc.gov.on.ca*.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Securities Regulators Release Revised Disclosure Rule

Canadian securities regulators issued proposed new requirements on June 20, 2003 for financial statements and other continuous disclosure by public companies. The proposal incorporates modifications made in response to public and industry input on the original proposal published last year.

The proposed rule — National Instrument 51-102 Continuous Disclosure Obligations — would establish enhanced, consistent disclosure standards across Canada. It deals with financial statements, management's discussion and analysis (MD&A), reporting of material changes and significant business acquisitions (a new requirement), annual information forms (AIFs), executive compensation disclosure, shareholder meeting circulars, restricted share disclosure requirements and some other filing requirements.

"This new rule should benefit both issuers and investors," said Stephen Sibold, chair of the Canadian Securities Administrators (CSA). "A uniform set of requirements reduces the cost and complexity that public companies face today in trying to satisfy different standards in various provinces and territories. We have also taken this opportunity to bring our requirements up to date, to streamline or eliminate some requirements, and to address some information gaps in the old system. The public and industry comment on the original proposal has been thorough and very helpful."

Changes from the original proposal include:

- A new, transparent and easy-to-apply concept of "venture issuer" that replaces a variety of categories of junior or small issuers. Venture issuers would be subject to differing treatment in some areas, in response to comments concerning their more limited resources;
- Streamlined requirements for business acquisition reporting;
- Clarification of the process for determining when, and to which investors, disclosure documents must be sent - giving investors an opportunity each year to express their wishes, while reducing document deliveries to investors who do not wish them.

NI 51-102 can be found on CSA member websites. The CSA is requesting comments by August 19, 2003.

SEDI Launched

As of May 5, 2003, public companies, other than mutual funds, are required to register on the System for Electronic Disclosure by Insiders (SEDI) and file issuer profile supplements. The 24-hour online disclosure system required that existing reporting issuers register with SEDI and file such information between May 5 and 30, while any issuer that becomes a SEDI issuer on or after May 30, 2003 has three business days to file its SEDI issuer profile supplement.

SEDI issuers are reporting issuers, other than mutual funds, that are required to file disclosure documents in electronic format through the System for Electronic Document Analysis and Retrieval (SEDAR) - essentially all Canadian public companies.

SEDI replaces paper-based reporting of insider trading data for insiders of SEDI issuers. Insiders began filing insider profiles and insider reports in SEDI June 9, 2003.

Please refer to CSA Staff Notice 55-309 Launch of the System for Electronic Disclosure by Insiders (SEDI) and Other Insider Reporting Matters (Notice 55-309). Amongst other things, Notice 55-309 sets out details about the SEDI launch, including the requirement for SEDI issuers to file an issuer profile supplement as well as the filing requirements for insiders.

SEDI, an initiative of the CSA, will bring faster and better public access to data on insider trades by making the information available electronically, virtually the minute it is filed. The SEDI system was developed for the CSA by CDS INC., a subsidiary of the Canadian Depository for Securities Limited, which also operates SEDAR and the National Registration Database (NRD).

Regulators Survey Industry's Straight-Through Processing Readiness

The Canadian Securities Administrators (CSA) are surveying the ability of market participants to use electronic rather than manual processing interfaces in-house as well as with other firms in the industry. Firms were asked to respond to an online survey of their Straight-Through Processing (STP) readiness between May 9 and May 30, 2003.

"As regulators, we have a responsibility to ensure Canada's capital markets are equipped to meet the industry's future needs and to continue to match global competitors' achievements," said Stephen Sibold, Chair of the CSA and of the Alberta Securities Commission. "Straight-Through Processing is a crucial requirement of our market's future. It requires all industry players, large and small, to remove the manual and redundant systems and processes from the entire lifecycle of a securities transaction. For that reason, we are probing the industry's readiness with an online survey of STP preparedness."

The objectives of the survey were to:

- assess the degree of support for in-house initiatives required for STP;
- identify the relative significance of the issues that need to be addressed to achieve STP;
- assess the current commitment of resources to STP; and
- provide a baseline against which to measure progress towards STP through subsequent surveys.

The Canadian Capital Markets Association (CCMA), an organization founded in 2000 by participants in the Canadian financial services industries to identify and recommend ways to meet the challenges and opportunities faced by our capital markets, is promoting STP strategies among market participants. The CCMA's STP milestones show interim goals in 2004, with the final milestone being the achievement of STP by mid-2005.

Guidelines for Capital Accumulation Plans

On April 25, 2003, the Joint Forum of Financial Market Regulators released for public comment proposed Guidelines for Capital Accumulation Plans (CAPs).

The proposed guidelines describe the rights and responsibilities of CAP sponsors, service providers and CAP members; outline the information and assistance that should be available to CAP members when making investment decisions; and ensure that regardless of the regulatory regime, there are similar regulatory results for all CAP products and services.

CAPs include all employer-sponsored savings plans in which employees are empowered to decide how their savings are invested. They include many defined contribution pension plans as well as, for example, group RRSPs, employer stock purchase plans, and profit sharing plans.

The deadline for submissions is August 31, 2003. Copies of the proposed guidelines can be viewed at *www.capsa-acor.org* or *www.ccir-ccrra.org* and on many CSA member websites.

The Joint Forum of Financial Market Regulators was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Securities Administrators (CSA) and also includes representation from the Canadian Insurance Services Regulatory Organization (CISRO) and the Bureau des services financiers in Quebec.

Contacts: **Nurez Jiwani**, Co-chair, Joint Forum Committee on Capital Accumulation Plans (416) 590-8478, or **Ann Leduc**, Co-chair, Joint Forum Committee on Capital Accumulation Plans (514) 940-2199.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

YBM Disclosure Documents Did Not Contain Full, True and Plain Disclosure of Material Facts

The OSC issued its decision in the matter of YBM Magnex International Inc. on July 2, 2003.

In its decision, the independent panel of OSC Commissioners stated: "This case raises serious questions with respect to the meaning of materiality in the prospectus and timely disclosure provisions of the *Securities Act*. A basic tenet of securities law is that disclosure is generally limited to material matters. Confronted by the dilemma of what should be disclosed to the public, the respondents relied on the concept of materiality as the cornerstone for disclosure. YBM's key disclosure documents did not, we find, contain full, true and plain disclosure of all material facts. YBM also failed to disclose a material change in its affairs forthwith. While disclosing good news with little hesitation, its practice was to restrict the disclosure of bad news."

"YBM's disclosure leads the reader to believe that the risks faced by YBM were no greater than the inherent risks faced by any company operating in Eastern Europe at that time. We find this to be incorrect. YBM was subject to company-specific risks. An investor in YBM's securities had the right to know what specific risks were presently threatening the issuer. Disclosure continues as the main principle for protecting investors, ensuring fairness in the trading markets and enhancing investor trust."

"Despite a hearing which took over 124 hearing days to complete, this case is not about organized crime, money laundering or whether the respondents believed YBM was not a real company. It is about the disclosure of risk. Materiality is reinforced as the standard for such disclosure in securities markets by taking into account the considerations associated with the exercise of judgement and reasonable diligence."

Staff is of the view that the decision clarifies standards for directors and officers and will help prevent another situation like YBM from occurring in the future. It is clear that information about risks, even if they can not be proven to be accurate, must be disclosed to investors. As well, issuers must disclose material changes in their affairs, such as notification by the issuer's auditor that it would not perform any further services, including rendering an audit opinion with respect to financial statements. The panel also found that underwriters must ensure that key personnel do not have conflicts of interest.

OSC Sets Date for Cowpland Hearing

The OSC set the matter of M.C.J.C. Holdings Inc. and Michael Cowpland for hearing from 10 a.m. October 20, 2003 to November 7, 2003. M.C.J.C. is alleged to have committed insider trading. Cowpland is alleged to have authorized as a Director the insider trading of M.C.J.C. and misled Staff of the Commission.

Settlement Approved Over Repeated Late Filings of Financial Statements

The OSC approved on June 26, 2003 a settlement agreement reached with The Farini Companies Inc. and Darryl Harris.

In the settlement agreement, Farini agreed that, in the period between 1996 and the present, it failed on 11 occasions to file its interim financial statements within the time period required by the *Securities Act*. It also agreed that it failed to file its annual financial statements within the required time period on eight occasions. Harris became a director of Farini in 1999, and was therefore a director at the time of the majority of these late filings.

The Commission reprimanded both Farini and Harris. It made an order requiring Harris to resign as a director of Farini by June 30, 2003 and prohibiting him from acting as an officer or director of any issuer for a period of one year.

OSC Approves Settlement Between Staff and Dual Capital Management Limited, Warren Wall and Joan Wall

The OSC convened a hearing June 24, 2003 to consider a settlement reached between Staff of the Commission and the respondents Dual Capital Management Limited, Warren Lawrence Wall, and Shirley Joan Wall. The respondents faced allegations that they participated in an illegal distribution of securities of Dual Capital Limited Partnership and engaged in other conduct contrary to the public interest.

The Commission panel approved the settlement. Vice-Chair Paul Moore, in his oral decision approving the settlement, commented that the conduct of the Walls was egregious. The Commission ordered that Dual Capital, Warren Wall and Joan Wall cease trading securities permanently, with the sole exception that after one year Warren Wall and Joan Wall be permitted to trade securities through a registered dealer for their RRSP accounts.

As a term of the Order, Warren Wall and Joan Wall each provided to the Commission an undertaking never to apply for registration in any capacity under Ontario securities law. Warren and Joan Wall are each prohibited permanently from becoming or acting as an officer or director of any reporting issuer and from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant. The Walls are prohibited also from becoming or acting as an officer or director of an issuer, with the exception that they are permitted to be an officer or director of a company providing services in the construction industry, provided that the issuer remains a private company and does not accept funds from the public.

In a separate proceeding, the Commission prosecuted Dual Capital, Warren Wall and Joan Wall in the Ontario Court of Justice in respect of the illegal distribution and sale of the units of Dual Capital Limited Partnership, resulting in their conviction on several charges. On October 30, 2000, the Honourable Justice J.J. Douglas sentenced Warren Wall to a prison term for a total of 30 months and Joan Wall to a

prison term for a total of 22 months. A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership.

Police Search Toronto Brokerage Firms

On June 18, 2003, police executed fourteen search warrants at thirteen brokerage firms and one business entity in the Greater Toronto Area in connection with an investigation into alleged stock market manipulation. The searches are part of a joint investigation conducted by the RCMP Greater Toronto Area Commercial Crime Section, the Ontario Securities Commission, the Ontario Provincial Police Anti-Rackets Section, the Greater Toronto Area Combined Forces Special Enforcement Unit and the Toronto Integrated Proceeds of Crime Unit.

The purpose of these searches was to collect documentary and other evidence to support the continuing investigation. The searches of these particular firms do not indicate complicity in the matter under investigation.

"This is part of our on-going integrated law enforcement effort to help ensure that Canada's capital markets remain among the safest in the world," stated Inspector Bob Davis, Officer in Charge of the RCMP Greater Toronto Area Commercial Crime Section. "Our investigation focuses on a small part of the stock market involving high-risk, highly-speculative stocks on the fringe of the stock market. Despite its limited impact on the average investor, we are concerned about any illegal activity that takes place in Ontario's capital markets and we will aggressively investigate any allegations of wrong-doing."

"This investigation is an example of the pro-active stance that regulators and police are taking to ensure the safety of our capital markets," said Ontario Securities Commission Executive Director Charles Macfarlane. "Investors can also help themselves by doing their homework before they invest in a risky, highly-speculative venture."

OSC Cease Trades Discovery Biotech

On June 10, 2003 the OSC issued a Notice of Hearing and a Statement of Allegations against Discovery Biotech Inc. and Graycliff Resources Inc.

The Statement of Allegations states that it appears that sales of the common shares of Discovery were being made by persons who are the employees or agents of Discovery and/or Graycliff. It is further alleged that the common shares were being sold to members of the public in breach of the *Securities Act*. It is further alleged that agents or employees of Discovery and/or Graycliff were making prohibited representations respecting the future value of Discovery common shares and their anticipated future listing on NASDAQ.

On June 4, 2003 the Commission issued a temporary order prohibiting the trading in Discovery common shares by Discovery and Graycliff and their respective employees and agents. The hearing on June 16, 2003 will be to consider an application by Staff to extend this temporary order.

OSC Issues Temporary Cease Trade Order Against Brian Anderson et al

The Ontario Securities Commission on June 5, 2003 issued a temporary order directing Brian Anderson, Leslie Brown, Douglas Brown, David Sloan and an entity known as Flat Electronic Data Interchange (a.k.a. F.E.D.I) to cease trading in certain investments defined by the order. The order also prohibits the respondents from providing certain documents to the public which are attached to the temporary order.

The order was extended by order of the Commission at a hearing held June 19, 2003 until a hearing to be held July 11, 2003.

OSC Releases Decision in the Matter of Stephen Duthie

The Commission released its decision in the Stephen Duthie matter on June 2, 2003. Duthie was a fixed income trader at Phoenix Research and Trading Corporation. Phoenix was registered with the Commission as an Investment Counsel and Portfolio Manager (ICPM). Phoenix provided investment advisory and portfolio management services to, among other entities, the Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP), a hedge fund. Duthie has never been registered with the Commission.

The panel held that Duthie's trading breached his obligations to his client, PFIA LP. Further, although Duthie asserted that he was not an "adviser" within the meaning of the Act, the panel disagreed. It held that Duthie was engaged in registrable activity and ought to have been registered.

The Commission reprimanded Duthie, ordering that:

- trading in any securities by Duthie cease for 20 years, except for personal trading through a registered broker after a period of 5 years;
- Duthie resign any position he holds as a director or officer of a reporting issuer;
- Duthie is prohibited from becoming or acting as a director or officer of any issuer for 20 years; and
- Duthie pay costs in the amount of $90,000.

OSC Proceedings in Respect of Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

At the request of the respondents, the hearing of this matter scheduled for Tuesday, June 3, 2003 has been adjourned to a date to be confirmed by the Secretary's Office.

OSC Extends Cease Trade Order Against Andrew Keith Lech

The OSC released reasons relating to its decision, on May 16, 2003, to extend a temporary cease trade order against Andrew Keith Lech. In its reasons, the Commission referred to the evidence tendered by Michael Vear, a forensic accountant in the enforcement branch of the Commission.

Based upon this evidence, Commissioners Lorne Morphy and Derek Brown, and Vice-Chair Paul Moore stated that they were "satisfied that satisfactory information had not been provided by Lech to the Commission within the 15 day period after the making of the temporary order on May 1, 2003, and that the length of time required to conclude the hearing could be prejudicial to the public interest."

The Commission has also issued a number of Directions requiring banks to hold the contents of bank accounts which appear to be associated with Lech's investment activities. To date, Directions have been issued against bank accounts held in Lech's name, as well as in the names of Daniel Shuttleworth, Dennis Yacknowiec, Gary McNaughton and Richard Gordon. These Directions have all been continued by the Superior Court of Justice pending further order of the court.

OSC Approves Settlement Between Staff and Trafalgar Associates Limited and Edward Furtak

The Commission approved a settlement on May 15, 2003 reached between Staff of the Commission and the respondents Trafalgar Associates Limited and Edward Furtak.

As a result of settlement discussions with Staff, Trafalgar redeemed all investments in FFWD-98. Accordingly, all investors in FFWD-98 received from Trafalgar monies representing the full purchase price of their initial investment. The transactions relating to Furtak's client were similarly reversed.

The Commission reprimanded the respondents and ordered that Furtak be prohibited from trading securities for six months. Trafalgar undertook to the Commission that it would not apply for registration with the Commission for four months. The Commission ordered total costs of $7,500 payable by the respondents.

OSC Rejects Proposed Settlement Between Staff and Thomas Stevenson

On May 22, 2003 the Commission convened a hearing to consider a settlement reached by Staff of the Commission and the respondent Thomas Stevenson.

During the material time, Stevenson was registered with the Commission to sell mutual fund securities and was sponsored by CCI Capital Canada Limited. Staff alleges that CCI agreed to sell and did sell securities of a company called Amber Coast Resort Corporation. Staff alleges that CCI was not registered to sell these securities and that Stevenson's conduct facilitated this unregistered activity.

The Commission did not approve the settlement agreement. In accordance with standard Commission procedure, the terms of the Settlement Agreement will remain confidential given that they were not approved.

Staff of the Commission are now assessing options for future steps to be taken in this case.

OSC Issues Reasons for Decision in the Matter of Meridian Resources Inc. and Steven Baran

The OSC, through its independent tribunal, issued on May 7, 2003 its Reasons for Decision in the matter of Meridian Resources Inc. and Steven Baran. The hearing took place on February 24, 2003.

The Commission held that Staff established each of its allegations and that "the terms of the transactions were abusive of the capital markets." As a result, the Commission ordered that Meridian and Baran cease trading for a period of five years. Meridian must not trade in any securities of Meridian. Baran must not trade in securities of any reporting issuer in which Baran, his wife, any of his children, and any other person with whom Baran has an agreement or understanding in respect of investment in the reporting issuer, individually or considered together, hold more that 5% of any class of securities. As well, Meridian and Baran were reprimanded; Baran was ordered to resign all positions that he holds as an officer or director of a reporting issuer; and, Baran is prohibited from becoming or acting as a director or officer of a reporting issuer for seven years.

OSC Approves Settlement Between Staff and John Steven Hawkyard

On April 29, the Commission approved the settlement reached between Staff of the Commission and the respondent John Steven Hawkyard.

Hawkyard was initially the Manager of the Bank of Montreal - Private Banking Services Branch and later moved to BMO Nesbitt Burns Inc. When at Nesbitt, Hawkyard was registered with the Commission. The Nesbitt branch was located in the same building and adjacent to the Bank of Montreal branch.

Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, at the request of John Dunn, prepared and signed letters that contained inaccurate representations and caused another Bank of Montreal employee to prepare and sign these letters. Hawkyard agreed that he acted contrary to the public interest by engaging in this conduct. Dunn is a Respondent and Branch Manager at Nesbitt.

The Commission suspended the registration of Hawkyard for a period of 12 months. As a condition precedent to the reinstatement of his registration, Hawkyard undertook to successfully complete the Ethics Seminar of the Compliance Program, a course offered by the Canadian Securities Institute. The Commission also reprimanded Hawkyard.

On September 23, 2002, the Commission had approved the settlement agreement reached between Staff of the Commission and BMO Nesbitt Burns Inc.

OSC Orders Sanctions Against Brian K. Costello

An OSC tribunal issued reasons for sanctions ordered against Brian K. Costello on April 30, 2003.

The panel found that Costello had acted as an adviser without being registered, as he should have been, and that he did not disclose information that he should have disclosed concerning his conflicts of interest. The panel found that Costello had not complied with Ontario securities law and had acted contrary to the public interest by engaging in these activities.

The evidence repeatedly showed that a principal purpose of Costello's seminars was lead generation. The standard routine used by Costello included collecting names of participants and distributing marketing materials to them, and incorporated various marketing techniques of which consumers and investors should be wary at "educational seminars". The panel, chaired by Paul Moore, OSC Vice-Chair, found that "good educational material should be balanced and free from marketing bias. It should not serve as bait to lead the unsuspecting to specific securities or service providers."

"It would be a disservice to investors, and undermine the efforts of conscientious educators, for us to endorse the view

presented by counsel for Costello that Costello's seminars were primarily educational in nature," said the panel.

The Commission ordered that:
(i) The registration exemption in Section 34 (d) of the Ontario Securities Act for a publisher or writer of a newspaper, newsletter or financial publication shall not be available to Costello for a period of five years;
(ii) Costello submit to a review of his practices and procedures as an adviser during the period from November 11, 2002, being the date of the commencement of the hearing, to April 29, 2003;
(iii) Costello be reprimanded; and
(iv) Costello pay $300,000 of the costs of the Commission in investigating his affairs and the costs of or related to conducting the hearing.

OSC Issues Reasons for Decision in Jack Banks a.k.a. Jacques Benquesus

The OSC, through its independent tribunal, issued on April 23, 2003 its Reasons for Decision in the matter of Jack Banks a.k.a. Jacques Benquesus.

As a result, the Commission ordered:
i) Banks resign any positions he holds as a director or officer of any issuer, and that he be prohibited permanently from becoming or acting as a director or officer of any issuer;
ii) Banks' indifference to the foreseeable consequences to others in the marketplace, together with his singular focus on the monetary benefit that LFI hoped to secure for itself, convinced the Commission that he should be removed from our markets. Therefore, the Commission ordered that Banks cease trading in securities permanently; and,
iii) Banks be reprimanded.

RECENT SPEECH

Excerpts from a keynote address by David A. Brown, Chair, Ontario Securities Commission to the Canadian Society of New York (Harvard Club, New York City, June 4, 2003)

I'm pleased to have the opportunity to speak to you today.

In Canada, our capital market structure and regulation are quite similar to yours. Or at least, they were until mid-summer last year when the Sarbanes-Oxley legislation was passed, requiring the Securities and Exchange Commission to put new rules in place, and changes to the listing requirements at the New York Stock Exchange were proposed as well. Today, I will tell you about the structure of the changes we are making to the regulation of our capital markets and how these changes in many important ways mirror the impacts of the changes made in the U.S. capital markets.

When it comes to securities regulation, we start with a system in which we see significant structural similarities. We both have disclosure-based regimes; we require accounting according to Generally Accepted Accounting Principles, or GAAP; we provide tools for investors and we both take a tough approach to enforcement.

There are slight differences in our GAAPs, in the detail of our regulation, and in the sanctions we mete out. These differences, I believe, exist partly because our markets have evolved in different legal systems, but also partly to reflect differences in our markets' make-up, for instance in the capitalization of our firms or in the proportion of controlled firms accessing our market.

But overall, we see our market as very similar to yours. We also see a similarity in some unhealthy incentives that have crept unnoticed into our market structure over time. What I will discuss today are the robust, made-in-Canada solutions that are sensitive to the circumstances of Canada's markets and securities laws but also largely equivalent and equally robust as the changes being brought about here in the U.S.

Canadian governments and regulators responded quickly to address the regulatory gaps exposed by Sarbanes-Oxley. At both the provincial and federal levels, governments are strongly in favour of taking measures to support investor confidence. They have moved quickly to make important contributions to restoring that confidence.

- Last month the Province of Ontario proclaimed into law a series of amendments to the *Securities Act* and the

(OSC Issues Investor Confidence Rules), continued from page 1)

The rules deal with:
1. CEO and CFO certification of annual and interim disclosures;
2. the role and composition of audit committees; and
3. support for the work of the Canadian Public Accountability Board in its oversight of auditors of public companies.

"Canada is not isolated from the effects of major regulatory changes in the U.S. market," said Mr. Brown. "Since Sarbanes-Oxley became law in the U.S., we have consulted widely and are publishing draft rules that will boost investor confidence by addressing key concerns."

The OSC also released a cost-benefit analysis of the application of the new rules. The study, conducted by the OSC's Chief Economist's office, found that as in virtually every other cost-benefit study, it is easier to identify and quantify the costs than the benefits. Nonetheless, the study demonstrates that even the high-end of the range of potential costs is significantly lower than the low-end of the range of potential benefits. Even taking into account just a partial list of benefits, the study shows that the benefits realized can be expected to be greater than the sum of the costs.

"It is gratifying that the rule changes not only make sense from a policy perspective, they also make sense from a cost-benefit perspective," concluded Mr. Brown.

Full text of the rules is available on the OSC's website at *www.osc.gov.on.ca*. Comments on the proposed rules are requested by September 25, 2003.

Commodity Futures Act. These amendments give the OSC rule-making authority to promote management accountability, auditor independence, and stronger audit committees. It gives the OSC the authority to levy an administrative penalty of up to one million dollars, and the ability to order the disgorgement of profits made as a result of a breach of the *Securities Act*. The legislation also gives the courts authority to impose higher fines and longer jail terms – a strong signal that stiffer sentences are needed in this area.

- The federal finance minister announced in his February budget that increased federal resources will be made available to combat criminal activity in our capital markets, to expand Royal Canadian Mounted Police investigative capacity in this area and increase resources for criminal prosecutions.
- The federal government is also proposing amendments to the Canada Business Corporations Act to impose higher corporate governance standards on CBCA companies.

Shortly after the passage of Sarbanes-Oxley, we launched a very public review of the merits of introducing similar reforms in Canada. We sought advice from stock exchanges, self-regulatory organizations, industry associations, public interest groups and groups of market participants formed to address the crisis in investor confidence. We consulted with governments and market participants from all segments of our markets. We debated the issues with market commentators and other regulators. We attended conferences and seminars and met with focus groups. And, most importantly, we listened.

On June 27, the Ontario Securities Commission will introduce three new rules for comment. This course of action, emerging from the consultation and public discussion of the past 10 months, is appropriate for Ontario and Canada – indeed essential. The rules deal with:

1. CEO and CFO certification of annual and interim disclosures;
2. the role and composition of audit committees; and
3. support for the work of the Canadian Public Accountability Board in its oversight of auditors of public companies.

These rules will be accompanied by a rigorous cost-benefit analysis. Their schedule for implementation is roughly comparable to the SEC draft rules, which have implementation dates ranging from this spring to the fall of 2004.

Support for a robust regulatory approach is tremendous across Canada. Canadian market participants want to know that corporate financial statements mean what they appear to mean, that auditors are responsible to shareholders, and that someone is examining the examiners – or in this case the auditors.

These three rules satisfy these concerns. They are as robust as the rules here in the United States. We believe they will be as effective as the U.S. rules in restoring investor confidence. But they are Canadian rules, with input from Canadian participants, to deal with unique Canadian circumstances.

Ladies and gentlemen, our system and structure for securities regulation must be dynamic and in a constant state of evolution to respond to constantly changing market realities. It has to reflect the broader base of investors, and the need to maintain their confidence in the market's integrity. It has to reflect the fact that we live in an interconnected world.

We have met the challenge that we set for ourselves. We've consulted with stakeholders. We've listened to what they have to say. Canadian measures to restore investor confidence will be as robust as those implemented in the U.S., but they will reflect the differences in Canadian markets:

- we will have comparable rules dealing with analyst standards and potential conflicts of interest;
- we will have comparable reforms to increase auditor independence;
- we will have tough new sanctions to deal with violators;
- CEOs and CFOs of all Canadian public companies will be required to certify financial results;
- audit firms will be required to be in good standing with the new Canadian Public Accountability Board in order to issue audit opinions for public companies; and
- audit committees, independent of management, will have oversight responsibilities in connection with the audit and financial reporting.

These reforms have support from investors, the business community and other Canadian securities commissions.

They will help ensure a Canadian market that is fair to Canadians, and a Canadian economy that is able to compete.

Thank you.

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Information on the OSC; Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.